

MINING SEMINAR DISCUSSES FINANCE OPTIONS IN THE SECTOR



On 17 November 2011, Holman Fenwick Willan LLP, in association with Moore Stephens LLP and KBC Advanced Technologies plc, hosted a mining seminar aimed at companies wishing to raise and provide finance in the sector. We have outlined below a short summary of the presentations given.

Raising corporate finance and due diligence: a look at UK corporate governance and the resources sector - is the UK a soft touch?

Nick Hutton, Partner, Holman Fenwick Willan

Nick's talk focussed on the November 2011 publicity concerning the perceived lack of proper corporate governance standards in overseas companies listing in London, particularly mining and mineral companies. It compared the UK regime with other jurisdictions, to examine whether the UK is a soft touch.

Nick explored the general report requirements in the UK and Europe and, in particular, the mineral reporting codes. He also examined the

reporting requirements in comparable regimes, specifically Australia and Hong Kong.

Licensing and regulatory hurdles in mining transactions from an off-taker's perspective

Damian Honey, Partner, Holman Fenwick Willan

Damian focussed on the need for off-takers to obtain local information regarding the licensing and regulatory regimes of host countries when conducting mining operations. This has been fuelled by the recent government intervention in various overseas countries.

Mining remains subject to sector specific licensing and requirements can apply to such areas as: marketing and soliciting business, import and export of products, storage of products, distribution of products, tax and customs, and environmental issues. The consequences of failing to abide by these requirements can lead to the temporary/permanent cessation of business, as well as civil/criminal sanctions.



Mitigating risks and how to approach litigation in mining deals when unavoidable

Andrew Williams, Associate, Holman Fenwick Willan

Andrew highlighted many of the potential risks involved in mining deals and detailed how these can be avoided through due diligence and careful planning. The need to seek specialist corporate and tax advice, both on a local and international scale, is key. The use of Bilateral Investment Treaties and Double Taxation Treaties was reviewed.

Andrew also gave some practical and helpful tips on what to do when things go wrong and how to approach litigation should the need arise. The use of ICSID to resolve disputes with foreign governments was reviewed.

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Raising capital in the heart of the world's financial markets

Lucy Tarleton, Business Development Manager, London Stock Exchange

Lucy gave a brief overview of the current market conditions for mining companies and commented on how London had remained the most active global IPO market during the financial crisis. More than a third of global fund raisings for mining companies in the last decade had been raised on the London Stock Exchange and it provides access to the world's largest pool of international equity assets, particularly in the mining sector.

She also explained the different routes to market available for mining companies on the London Stock Exchange. These include the Main Market, the Specialist Fund Market, the Professional Securities Market and AIM. The choice of which market a company should select will depend on a number of factors including: the stage in the company's development, the complexity of the offer and the securities issued, the investors targeted, the size of the company, and lastly the company's strategy and objectives. Finally, Lucy outlined the strategies for successful capital raising, such as having a strong track record, size being favoured, being well prepared and active, long-term investor engagement.

Reporting accountants and accounting issues

Michael Simms, Partner, Moore Stephens LLP and **Paul Edwards**, Senior Director, Moore Stephens LLP

Moore Stephens focussed on the role of the reporting accountant in relation to mining companies seeking a flotation on AIM or the

Main Market of the London Stock Exchange. In addition to explaining the flotation process, some of the key issues to consider on a mining float were highlighted, such as financial due diligence, reporting procedures and working capital projections. In particular, the importance of having independent third party support (e.g. nomad, reporting accountant, competent persons) for key assumptions underpinning working capital projections was discussed.

Moore Stephens also explained the importance of International Financial Reporting Standards (“IFRS”), which have become one of the main reporting frameworks for preparing financial statements for public transactions. The main changes to IFRS which impact on mining companies were addressed. The need for having in place a proper system of internal controls to produce the necessary management information, including producing financial statements on a timely basis, was stressed.

Competent Persons Reporting - key fundamentals, risks and pitfalls

Ben Sawford, Managing Director, KBC Environmental - Mining and Metals; and **Geoff Hammond**, Associate Geologist, KBC Advanced Technologies plc

KBC focussed on the scenarios and uses of Competent Persons Reports, which are principally required for all IPO prospectuses of mineral companies. CPRs are often used for disclosing material assets and liabilities in capital raising, reserve based lending, asset valuations, stock exchange flotations or M&A.



Key details included in CPRs are a geological overview and the legal situation of the asset, the reserves and resources, environmental and social compliance and liabilities, infrastructure, utilities, logistics and manpower, and any special factors and assumptions.

KBC explained that CPRs are usually prepared by a combination of geologists, mining engineers, mineral processors, metallurgists and valuers. The key requirements of any CPR is transparency i.e. sufficient information presented clearly and unambiguously; materiality i.e. contains all the relevant information available at the date of disclosure, which investors and their professional advisers would reasonably require; and competence i.e. the report be based on work that is the responsibility of suitably qualified and experienced persons, who are subject to an enforceable professional code of ethics and rules of conduct.

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